

## Agricultural Marketing Service, USDA

## § 47.13

examiner who is an attorney employed in the Office of the General Counsel of the Department, in any proceeding assigned to him or her, shall have power to:

- (1) Rule upon motions and requests;
- (2) Set the time, place, and manner of the hearing, adjourn the hearing, and change the time, place, and manner of the hearing;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Issue subpoenas over the facsimile signature of the Secretary requiring the attendance and testimony of witnesses and the production of books, contracts, papers, and other documentary evidence;
- (5) Summon and examine witnesses and receive evidence;
- (6) Take, or order (over the facsimile signature of the Secretary) the taking of, depositions;
- (7) Admit or exclude evidence;
- (8) Hear oral argument on facts or law;
- (9) Require each party, prior to any hearing, to provide all other parties and the examiner with a copy of any exhibit that the party intends to introduce into evidence;
- (10) Require each party, prior to any deposition, to provide all other parties and the examiner with a copy of any document that the party intends to use to examine a deponent;
- (11) Require that any hearing to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties and the examiner are able to transmit and receive documents during the hearing;
- (12) Require that any deposition to be conducted by telephone or audio-visual telecommunication be conducted at locations at which the parties are able to transmit and receive documents during the deposition;
- (13) Do all acts and take all measures necessary for the maintenance of order and for the efficient conduct of the proceeding.
- (d) *Who may act in absence of examiner.* In case of the absence, illness, resignation, or death of the examiner who has been assigned to a proceeding, or, in case the General Counsel determines that, for other good cause, such examiner should not act, the powers and du-

ties to be performed by the examiner under these rules of practice in connection with such proceeding may, subject to the provisions of paragraph (a) of this section, be assigned to another examiner.

[10 FR 2212, Feb. 27, 1945; 11 FR 224, Jan. 4, 1946, as amended at 24 FR 10055, Dec. 12, 1959; 38 FR 30445, Nov. 5, 1973; 60 FR 8459, Feb. 14, 1995; 64 FR 38106, July 15, 1999]

### § 47.12 Intervention.

At any time after the institution of a proceeding and before it has been submitted to the Secretary for final consideration, the Secretary or the examiner as defined in § 47.2(i)(1) may, upon petition in writing and for good cause show, permit any person to intervene therein. The petition shall state with preciseness and particularity:

- (a) The petitioner's relationship to the matters involved in the proceeding;
- (b) the nature of the material the petitioner intends to present in evidence;
- (c) the nature of the argument the petitioner intends to make; and
- (d) any other reason that the petitioner should be allowed to intervene.

[10 FR 2209, Feb. 27, 1945, as amended at 60 FR 8459, Feb. 14, 1995; 64 FR 38107, July 15, 1999]

### § 47.13 Motions and requests.

(a) *General.* (1) All motions and requests made after the formal filing of the proceeding with the Hearing Clerk shall be filed with the Hearing Clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript or recording.

(2) The examiner may rule upon all motions and requests filed or made prior to the transmittal of the record to the Secretary as hereinafter provided. The Secretary shall rule upon all motions and requests filed after that time.

(b) *Certification to the Secretary.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to transmittal of the record to the Secretary as provided in this part shall be made by and in the discretion of the examiner. The examiner may either rule upon or certify the motion, request, objection,